

**ORDINANCE NO. \_\_\_\_**

**AN URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF WHEATLAND  
AMENDING WHEATLAND MUNICIPAL CODE TITLE 18 REGARDING MEDICAL  
MARIJUANA DISPENSARIES**

The City Council of the City of Wheatland does ordain as follows:

**SECTION 1. Purpose and Authority.** The purpose of this urgency interim ordinance is to prohibit medical marijuana dispensaries while City staff prepares and City Planning Commission and City Council consider a regular ordinance to prohibit medical marijuana dispensaries from locating within any development zone within the City. This urgency interim ordinance is adopted pursuant to California Constitution article 11, section 7, Government Code sections 65800, *et seq.*, particularly section 65858, and other applicable law.

**SECTION 2. Findings.** The City Council of the City of Wheatland finds as follows:

A. In 1996, the California voters enacted Proposition 215, the Compassionate Use Act (the “CUA”). The CUA was ultimately upheld by the California Supreme Court in *People v. Mower* (2002) 28 Cal.4th 457. In 2003, the Legislature enacted the state Medical Marijuana Program (the “MMP”) to “[c]larify the scope of the application of the [CUA] and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers[;] [¶] ... [p]romote uniform and consistent application of the act among the counties within the state ... [¶] ... [and] [e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.” The MMP is codified at Health and Safety Code sections 11362.5, *et seq.*

B. In the state Court of Appeal’s decision in *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, the Court of Appeal held, “[n]either the CUA nor the MMP compels the establishment of local regulations to accommodate medical marijuana dispensaries. The City’s enforcement of its licensing and zoning laws and its temporary moratorium on medical marijuana dispensaries do not conflict with the CUA or the MMP.” (*Kruse, supra*, 177 Cal.App.4th at p. 1176.) The City therefore retains its ability to regulate medical marijuana dispensaries through its zoning and business license ordinances.

C. The establishment of medical marijuana dispensaries within the City has several adverse secondary effects, including but not limited to loitering, increased pedestrian and vehicle traffic, increased noise, and impacts on surrounding property owners. These adverse secondary effects present a clear and present danger to the preservation of the safety, health and welfare of City residents and businesses. The City currently does not have any zoning regulations that expressly prohibit or regulate medical marijuana dispensaries in the City.

D. The City Council is aware that there are expressions of interest of establishing medical marijuana dispensaries within the City, and it is in the best interest of City residents and

businesses that those dispensaries be regulated under Title 18 of the City's Municipal Code, which includes the City's zoning regulations. The City is preparing, and the City Planning Commission and City Council will consider, a regular ordinance that addresses the establishment of medical marijuana dispensaries in the City. There is insufficient time, however, for the City Council to both (1) preserve the status quo pending its consideration and adoption of a regular ordinance to address medical marijuana dispensaries within the City, and (2) consider and adopt such a regular ordinance through the regular zoning ordinance-adoption procedures.

E. There is a current and immediate threat to the safety, health and welfare of residents and businesses within the City and the establishment of a medical marijuana dispensary within the City prior to the adoption of that regular zoning ordinance would result in the realization of that threat.

F. This ordinance complies with State law and imposes reasonable regulations that the City Council concludes are necessary to protect public safety, health and welfare of residents and businesses within the City. This ordinance is consistent with the City's General Plan, Municipal Code, and other applicable zoning ordinances and regulations.

**SECTION 3. Declaration of Urgency.** Based on the findings set forth in Section 2 hereof, this ordinance is declared to be an urgency interim ordinance that shall be effective immediately after it is adopted by the City Council.

**SECTION 4.** The following definition is hereby added to Wheatland Municipal Code section 18.06.010:

“Medical Marijuana Dispensary” or “Dispensary” means any facility or location where medical marijuana is made available to and/or distributed by or to two or more persons in the following categories: a primary caregiver; a qualified patient; or a person with an identification card, in strict accordance with California Health and Safety Code section 11362.5, *et seq.* Medical Marijuana Dispensary shall not include any of the following uses, as long as the location of such uses are otherwise regulated by this Code or other applicable law and such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5, *et seq.*: a clinic that is licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility that is licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness that is licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential hospice or home health agency that is licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

**SECTION 5.** Section 18.09.090 is hereby added to the Wheatland Municipal Code to read as follows:

Section 18.09.090. Prohibition of Medical Marijuana Dispensaries.

Medical Marijuana Dispensaries are prohibited in all zoning districts within the City, including without limitation all planned development districts, and no conditional use permit shall be issued to any Dispensary.

**SECTION 6. Exempt from CEQA.** The City Council concludes that there is no possibility that the adoption of this urgency interim ordinance could have a significant effect on the environment. This urgency interim ordinance therefore is categorically exempt under the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines, section 15061, subdivision (b)(3).

**SECTION 7. Effective Date.** This urgency interim ordinance shall become effective immediately after it is adopted by the City Council and shall remain in effect for 45 days after it is adopted, unless the City Council extends the effective period of the ordinance in the manner prescribed by Government Code section 65858, subdivision (a).

**SECTION 8. Posting.** Within 15 days after the City Council adopts this interim urgency ordinance the City Clerk shall cause the ordinance to be posted in at least three public places within the City.

**PASSED AND ADOPTED** by the City Council of the City of Wheatland on the \_\_\_\_ day of \_\_\_\_\_, 2010, by the following four-fifths vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Enita Elphick, Mayor

Attest:

\_\_\_\_\_  
Lisa J. Thomason, City Clerk

I hereby certify that the foregoing is a true and correct copy of City of Wheatland Ordinance No. 10-\_\_\_\_, which ordinance was duly introduced, adopted and posted pursuant to law.

\_\_\_\_\_  
Lisa J. Thomason, City Clerk